

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

July 25, 2008

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 06HD-235
08HD-066

Hawaii

Amend Prior Board Action of December 8, 2006 (D-5), Sale of Remnant State Lands, Abandoned Railroad Right-of-way to Alan S. Takase, and Rescind Board Action of May 23, 2008 (D-7) Grant of Perpetual, Non-Exclusive Easement to DJAT, LLC for Utility Purposes, Waiakea, South Hilo, Hawaii, Tax Map Key:3rd/2-4-57: portion of 01.

BACKGROUND:

At its meeting of December 8, 2006, agenda Item D-5 (Exhibit A), the Land Board approved the sale of remnant State lands, abandoned railroad right-of-way to Alan S. Takase, Waiakea, South Hilo, Hawaii, Tax Map Key:3rd/2-4-57: portion of 01. The purpose of the acquisition was to accommodate the connection of a sewer line from the applicant's property the county municipal sewer system.

Subsequent to the Board approving the above-described sale, all transactions involving ceded lands were held in abeyance pending the outcome of the State Supreme court ruling involving ownership of State lands. The applicant (DJAT, Inc.) then proceeded with the alternative of obtaining a perpetual, non-exclusive easement for utility purposes. The Board, at its meeting of May 23, 2008, under agenda item D-7 (Exhibit B), approved the request as amended. The Board amended the recommendation by replacing the first recommendation with the requirement that the Applicant shall be responsible for obtaining an EA or EIS in compliance with HRS Chapter 343 if staff, after consultation with the Deputy Attorney General, determines such action is necessary.

ANALYSIS:

Following the Board approving the above-described request for the sale of Remnant State lands, staff has been informed by the applicant that his company DJAT, INC is now the legal owner of the property. In addition, the office of the Attorney General has subsequently determined that the abandoned railroad right-of-way lands can be sold as remnant lands and therefore, the request for an easement is now not necessary.

CONCLUSION:

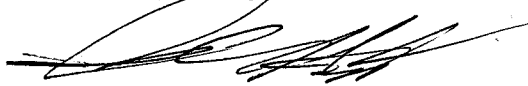
Staff is therefore recommending that the Board amend its prior action of December 8, 2006, agenda item D-5 by changing the applicants name from Alan S. Takase to DJAT, Inc.

Staff is also requesting the Board rescind its prior action of May 23, 2008, agenda item D-7 approving the request for an easement over government lands for utility purposes.

RECOMMENDATION: That the Board:

1. Amend its prior board action taken at its meetings of December 8, 2006, Agenda Item D-5 by changing the name of the applicant from Alan S. Takase to DJAT, Inc.;
2. Rescind its prior board action taken at its meeting of May 23, 2008, agenda item D-7, approval for a utility easement over government lands
3. Review and approval by the Department of the Attorney General; and
4. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully submitted,



 Gordon C. Heit
Land Agent

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson 

EXHIBIT A

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

December 8, 2006

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 06HD-209

Hawaii

Sale of Remnant State Lands, Abandoned Railroad Right-of-way to Alan S.
Takase, Waiakea, South Hilo, Hawaii, Tax Map Key: 3rd/2-4-57: portion of 01.

APPLICANT:

Alan S. Takase, married, Tenants in Severalty, whose business and mailing address is 270
Kanoelani Street, Hilo, Hawaii.

LEGAL REFERENCE:

Section 171-52, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Waiakea Cane Lots situated at Waiakea, South Hilo,
Hawaii identified by Tax Map Key: 3rd/2-4-57: portion of 01, as shown on the attached
map labeled Exhibit A.

AREA:

1,350 square feet, more or less.

ZONING:

State Land Use District: Urban
County of Hawaii CZO: Open

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

December 8, 2006

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to Alan S. Takase

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December 8, 2006

CURRENT USE STATUS:

Vacant and unencumbered.

CONSIDERATION:

One-time lump sum payment of fair market value to be determined by independent or staff appraiser, subject to review and approval by the Chairperson.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion beyond that previously existing."

DCCA VERIFICATION:

Not applicable. The Applicant as a landowner is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine the one-time payment of fair market value for the remnant;
- 2) Consolidate the remnant with the Applicant's abutting property through the County subdivision process;
- 3) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;
- 4) Pay for the pro-rated cost to subdivide the remnant so that portions may be sold to multiple abutting owners.

REMARKS:

Pursuant to section 171-52, HRS, a remnant is defined as "a parcel of land economically or physically unsuitable or undesirable for development or utilization as a separate unit by reason of location, size, shape, or other characteristics." The subject parcel has been determined to be a remnant by this definition for the following reasons:

The parcel is an abandoned railroad right-of-way.

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Applicant is the owner of parcel (3) 2-2-26:24 as staff has confirmed by research through the County of Hawaii Real Property Tax Office web site. Other abutting properties to the subject remnant parcel include Hilo Meishoin. According to Section 171-52, HRS, if there is more than one abutting owner who is interested in purchasing the remnant, it shall be sold to the one submitting the highest sealed bid or if the remnant abuts more than one parcel, the Board may subdivide the remnant so that a portion may be sold to each abutting owner.

The Hawaii District Land Office (HDLO) has received requests from both the applicant and the abutting property owner, Hilo Meishoin for the purchase of portions of the abandoned railroad remnant. Both landowners are in agreement to each take a 15-foot portion of the 30-foot wide remnant abutting their respective properties. The applicant's property has 90 feet of remnant land available to them while the Hilo Meishoin church has 541 feet bordering the railroad right-of-way. Because the church is requesting the purchase of the entire portion of remnant abutting their property, staff will need to contact all other adjoining property owners and allow them the opportunity to purchase their respective portion of the right-of-way.

The applicant wishes to utilize the remnant as a setback to allow more room for building on his property. The applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Several Federal, State and County governmental agencies were solicited for comments, and all responses were returned stating no objections or comments with the exception of the Office of Hawaiian Affairs (OHA). In their response to staff's request for comments, OHA has suggested that the abandoned railroad right-of-way may be utilized as a walking trail, park system or green corridor and has suggested that an analysis be completed to determine the feasibility of such a park way. Cursory research by staff however, has determined that the abandoned railroad right-of-way is fragmented throughout the Hilo area and therefore it would not be feasible for the remaining portions to be retained for park purposes. OHA has also stated that it would prefer the State not engage in the fee simple sale of any ceded lands.

Staff is recommending that the Board consent to the sale of the remnant State lands, being that portion of an abandoned railroad right-of-way to Alan S. Takase.

RECOMMENDATION:

That the Board:

1. Find that the subject lands are economically or physically unsuitable or undesirable for development or utilization as a separate unit by reason of location, size, shape, or other characteristics and, therefore, by definition is a remnant pursuant to Chapter 171, HRS.

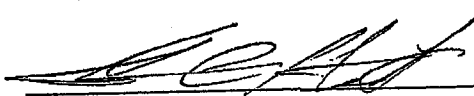
BLNR - Sale of Remnant
to Alan S. Takase

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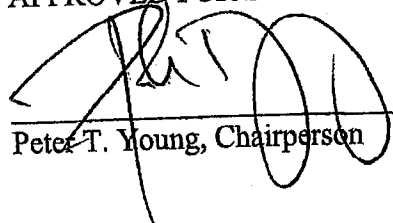
2. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: 3rd/2-2-26:24, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
3. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
4. Authorize the subdivision and consolidation of the subject remnant by the Applicant.
5. Subject to the Applicant fulfilling all of the Applicant Requirements listed above, authorize the sale of the subject remnant to Alan S. Takase covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - a. The standard terms and conditions of the most current deed or grant (remnant) form, as may be amended from time to time;
 - b. Review and approval by the Department of the Attorney General; and
 - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

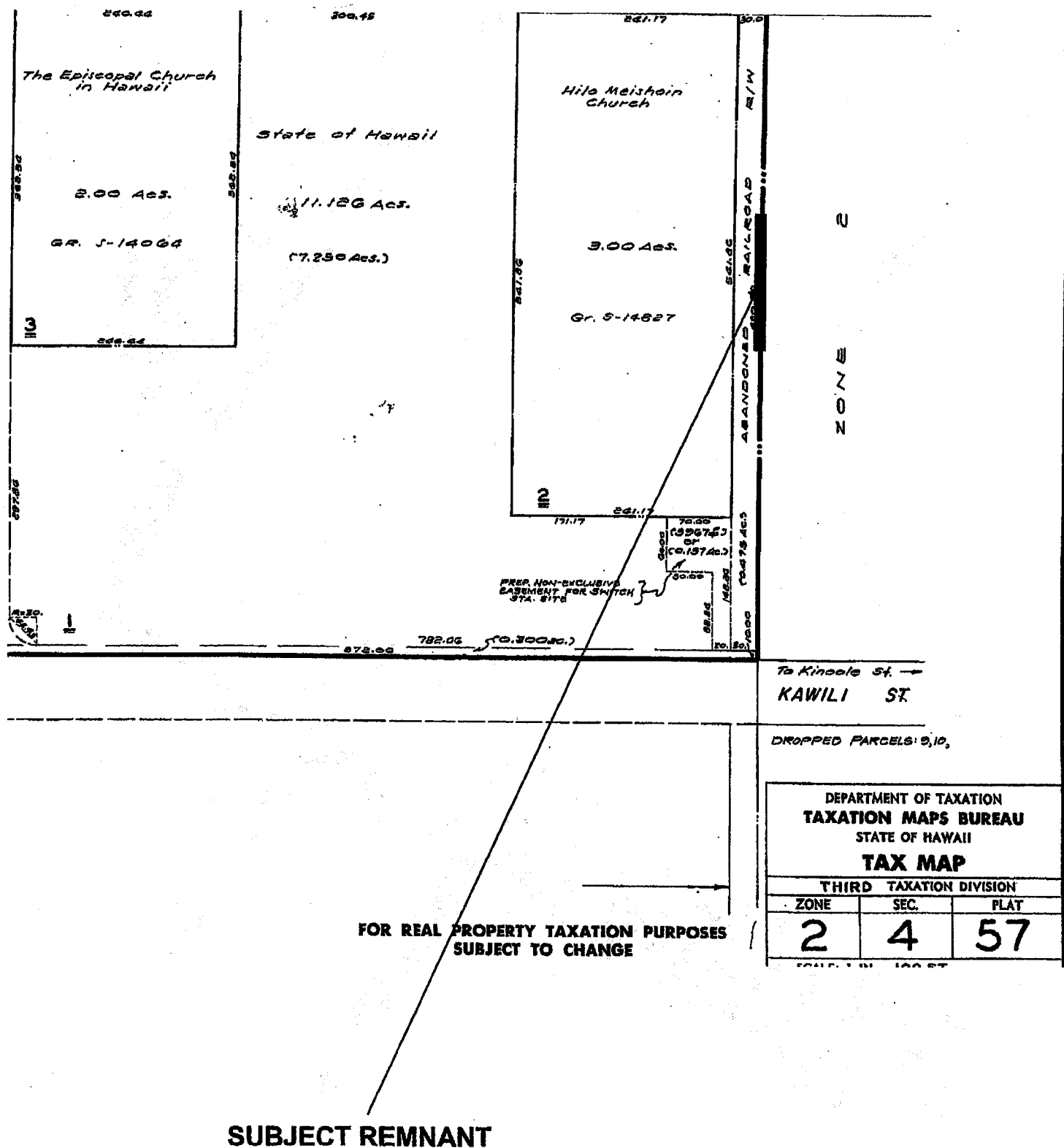


Gordon C. Heit
Land Agent

APPROVED FOR SUBMITTAL:



Peter T. Young, Chairperson

EXHIBIT A**TMK: 3RD/2-4-57: portion 01**

Takase Remnant Purchase

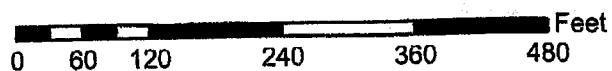
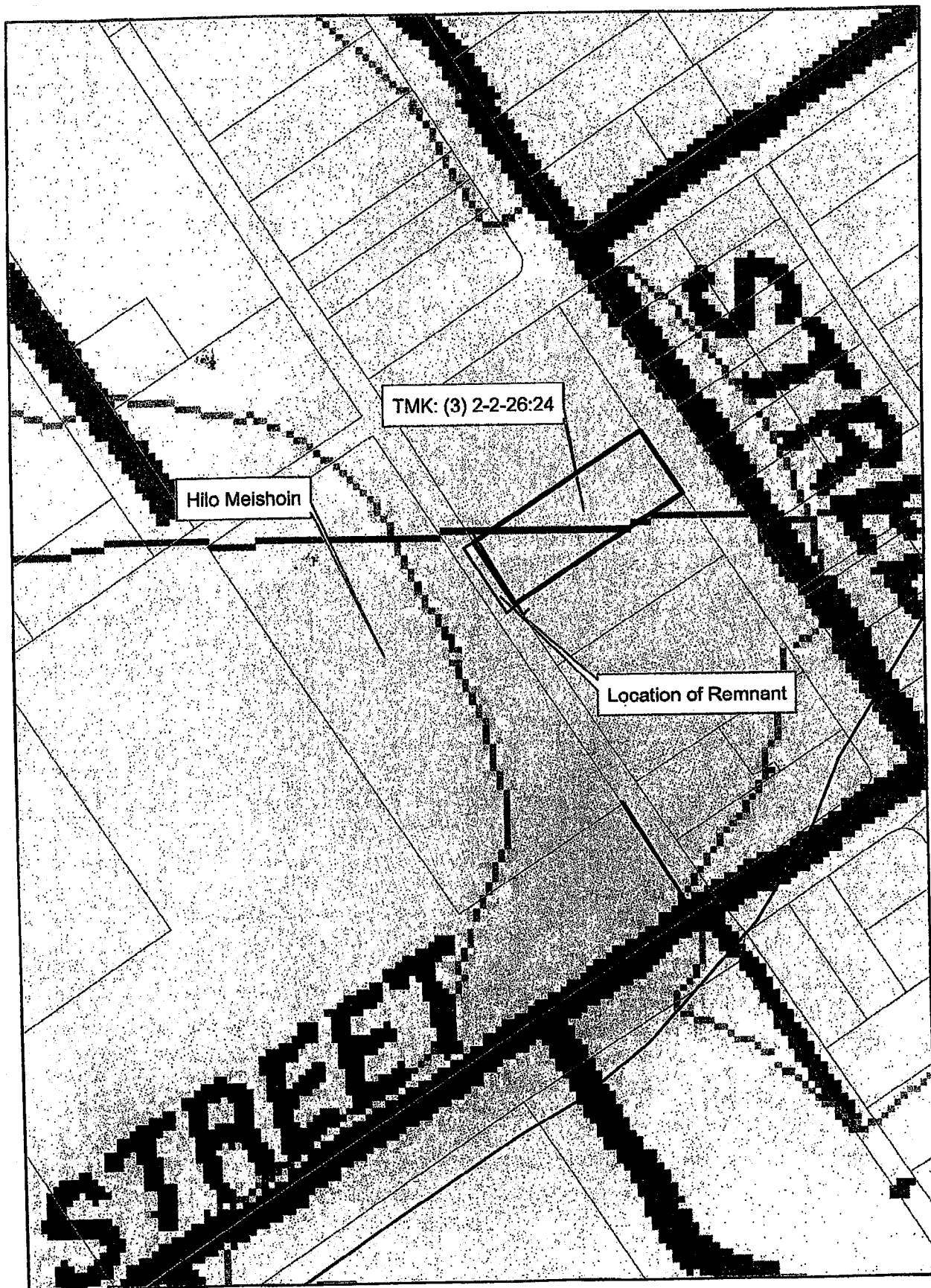


EXHIBIT B
AMENDED

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

May 23, 2008

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 08HD-066

Hawaii

Grant of Perpetual, Non-Exclusive Easement to DJAT, LLC for Utility Purposes,
Waiakea, South Hilo, Hawaii, Tax Map Key: 3rd/2-4-57:portion 01.

APPLICANT:

DJAT, LLC, a Hawaii Limited Liability Company whose business and mailing address is
270 Kanoelani Street, Hilo, Hawaii 96720.

LEGAL REFERENCE:

Section 171-13, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Waiakea Cane Lots situated at Waiakea, South Hilo,
Hawaii identified by Tax Map Key: 3rd/2-4-57:por. of 01, as shown on the attached map
labeled Exhibit A.

AREA:

3,000 square feet, more or less.

ZONING:

State Land Use District: Urban
County of Hawaii CZO: Open

as Amended
APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

May 23, 2008

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

BLNR - Issuance of Easement
to DJAT, LLC

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CURRENT USE STATUS:

Vacant and unencumbered.

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain, repair, replace and remove waste disposal transmission pipeline over, under and across State-owned land.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent or staff appraisal establishing fair market rent, subject to review and approval by the Chairperson.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 3, Item No. d that states "Construction and location of single new small facilities or structures and alterations and modification of same and installation of new, small, equipment and facilities and alterations and modifications of same including but not limited to: water, sewage, electrical, gas, telephone, and other essential public utility services extensions to serve such structures or facilities."

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u>X</u>	NO <u>—</u>
Registered business name confirmed:	YES <u>X</u>	NO <u>—</u>
Applicant in good standing confirmed:	YES <u>X</u>	NO <u>—</u>

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine initial rent/one-time payment;
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;
- 4) Obtain a title report to ascertain ownership, where necessary, at Applicant's own cost and subject to review and approval by the Department.

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to DJAT, LLC

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REMARKS:

The applicant, DJAT, LLC (TMK: 3rd/2-2-26:24) has requested an easement over State land to connect their waste disposal to the County sewer line in compliance with the Clean water Act. The most efficient and cost effective means would be to connect to the sewer line on Kawili Street.

The State land is a portion of an abandoned railroad right-of-way encompassed into parcel 3rd/2-4-57:01. The length of the easement would be approximately 300 feet from the center of the applicants' property to Kawili Street.

The Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Various governmental agencies were solicited for comments. All respondents had no comments or objections to the request as indicated below:

County of Hawaii Agencies	Comments
Environmental Management	No Objection
Fire Department	No Comments
Planning	No Objections
Police Department	No Objections
Public Works	No Comments
Water Department	No Objections
State of Hawaii Agencies	Comments
DOH-Environmental Management	No Response
DHHL	No Objection
DLNR-Historic Preservation	No Objection
DOT-Highways Division	No Response
Other Agencies	Comments
Office of Hawaiian Affairs	No Objection

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (3) 2-2-26:24, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.

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to DJAT, LLC


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3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a perpetual non-exclusive easement to DJAT, LLC covering the subject area for utility purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

- A. The standard terms and conditions of the most current perpetual easement document form, as may be amended from time to time;
- B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key.3RD/2-2-26:24, provided that when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document;
- C. Review and approval by the Department of the Attorney General; and
- D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,


Gordon C. Heit
Land Agent

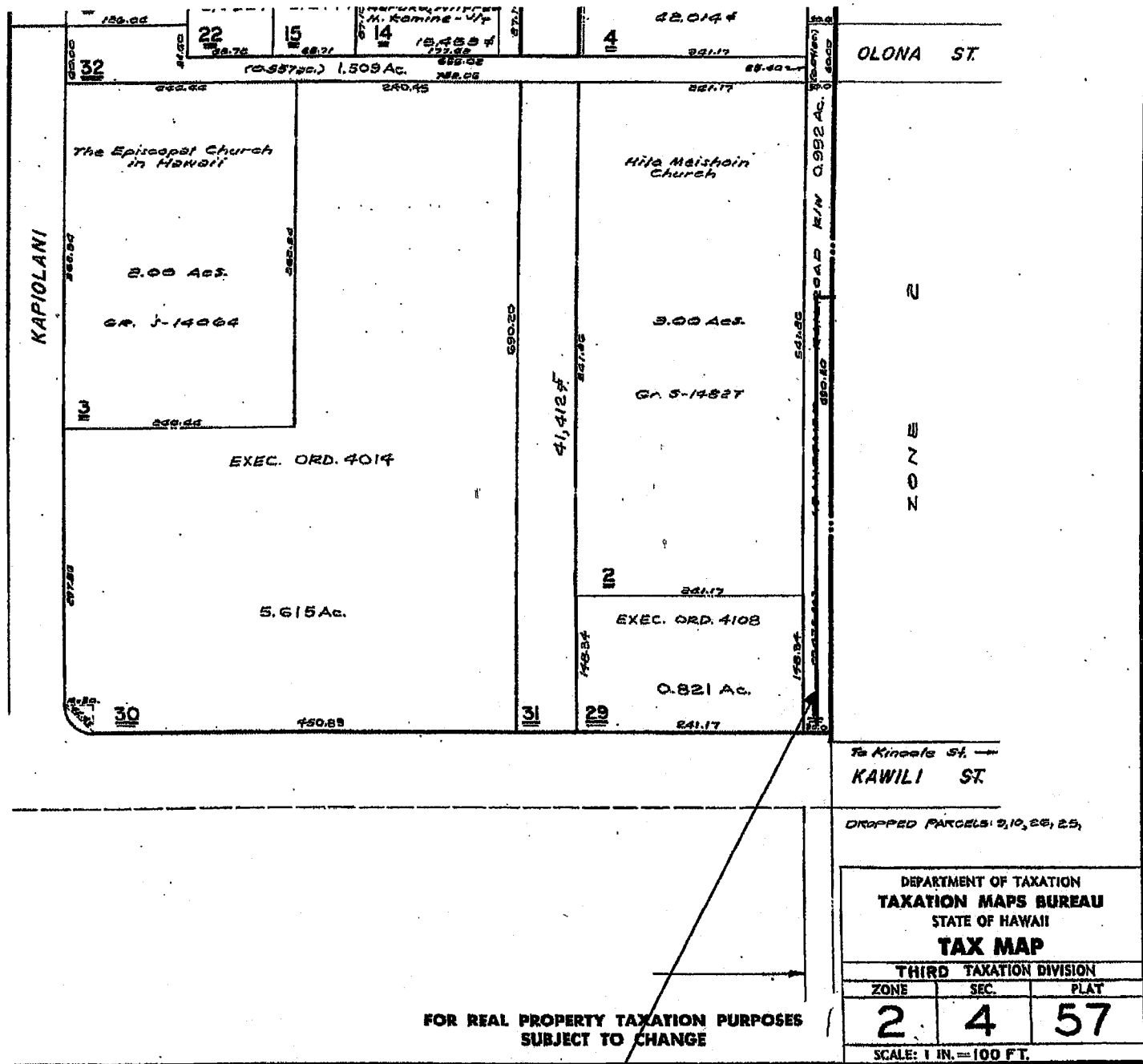
APPROVED FOR SUBMITTAL:


Laura H. Thielen, Chairperson

Approved as Amended. The Land Board amended the recommendation by replacing the first recommendation with a requirement that the Applicant shall be responsible for obtaining an EA or EIS in compliance with HRS Chap. 343 if staff, after consultaion with the AGs, determines such action is necessary. Otherwise, the Land Board approved staff's recommendations as submitted.

TMK: 3RD/2-4-57:01

EXHIBIT A



DJAT LLC Easement

